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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,637	01/23/2002	Stephen L. Siegler	LAWR0021US	9426
24235	7590	07/05/2005	EXAMINER	
LEVINE & MANDELBAUM 444 MADISON AVENUE 35TH FLOOR NEW YORK, NY 10022			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/055,637	Applicant(s) SIEGLER ET AL.	
	Examiner Michael P. Ferguson	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. In view of the appeal brief filed on February 18, 2020, PROSECUTION IS HEREBY REOPENED. A new ground(s) of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Objections

2. Claim 8 is objected to because of the following informalities:

Claim 8 (line 2) recites "spring based". It should recite --spring biased--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

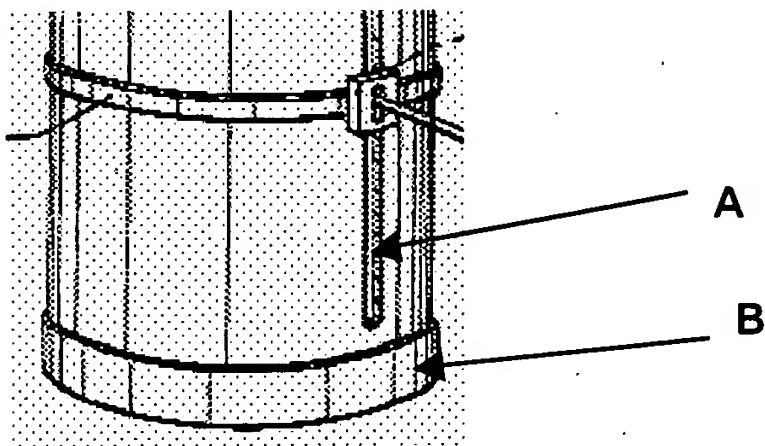
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4. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Payne (US 4,119,301).

As to claim 1, Payne discloses a pedestrian traffic control device, comprising:
a hollow, upright, one piece, post **4** having an open upper end and a lower end,
a slot **A** (Figure 2 reprinted below with annotations) in the post between its ends,
the slot being spaced from both ends of the post,

a cassette **15,16** located within the post and between its ends, the cassette incorporating a tape **16** wound on a spool **15**, the tape being extendible from the cassette, through the slot the post, in a direction generally perpendicular to the axis of the post, both the upper and lower edges of the tape, when extended, being spaced from the upper end of the post several inches (inherently; based on scale of Figures 1 and 2), and

means **9** for holding the cassette within the post (Figures 2 and 5).



As to claim 2, Payne discloses a device wherein the post **4** and cassette **15,16** are both generally circular in cross-section, and the outer diameter of the cassette, along its entire axial length, is smaller than the internal diameter of the post, so that the

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cassette can be inserted into the open upper end of the post and moved to its location between the ends of the post (Figure 5).

As to claim 3, Payne discloses a device wherein the cassette **15,16** is held within the post **4** at a position such that the lower edge of the tape **16**, when extended, is less than twenty-seven inches above the floor supporting the post (Figure 1).

As to claim 4, Payne discloses a device including means **B,13** for supporting the cassette **15,16** within the post **4** in the region of the slot **A** in the post (Figures 2 and 5).

As to claim 5, Payne discloses a device wherein the support means **B,13** includes a tube **B** (identical to upper tube **9**; Figure 6) within the post having an upper end in the region of the lower end of the slot **A** in the post **4**, the cassette **15,16** being seated upon the upper end of the tube (Figures 2 and 6).

As to claim 6, Payne discloses a device wherein no tape-holding cassette occupies the upper end of post **4** (Figure 2).

As to claim 7, Payne discloses a method of assembling a pedestrian traffic control device, the device including a hollow post **4** having an open upper end and a slot **A** between and spaced from the post ends, both the upper and lower edges of the slot being spaced from the upper end of the post at least several inches (inherently; based on scale of Figures 1 and 2), and a cassette **15,16** incorporating spool **15** on which a tape **16** is completely wound, the free end the tape being exposed, the method including the steps of:

inserting the cassette into the open end of the post,

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maneuvering the cassette along the length of the post until the free end of the tape is accessible through the slot in the post,

pulling the free end of the tape through the slot, and

thereafter attaching a finger pull **19** to the free end of the tape exposed outside the post, the pull being sized large enough so that the free end of the tape, with pull attached cannot be retracted into the post through the slot (Figures 2 and 5).

5. Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Oster (US 4,844,420).

As to claim 1, Oster discloses a pedestrian traffic control device, comprising:

a hollow, upright, one piece, post **12** having an open upper end and a lower end,

a slot **24** in the post between its ends, the slot being spaced from both ends of the post,

a cassette **30,18** located within the post and between its ends, the cassette incorporating a tape **18** wound on a spool **30**, the tape being extendible from the cassette, through the slot the post, in a direction generally perpendicular to the axis of the post, both the upper and lower edges of the tape, when extended, being spaced from the upper end of the post several inches (inherently; based on scale of Figures 1 and 4), and

means **14,46** for holding the cassette within the post (Figures 1 and 4).

As to claim 2, Oster discloses a device wherein the post **12** and cassette **30,18** are both generally circular in cross-section, and the outer diameter of the cassette, along its entire axial length, is smaller than the internal diameter of the post, so that the

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cassette can be inserted into the open upper end of the post and moved to its location between the ends of the post (Figure 4).

As to claim 4, Oster discloses a device including means **34,36** for supporting the cassette **30,18** within the post **12** in the region of the slot **24** in the post (Figure 4).

As to claim 5, Oster discloses a device wherein the support means **34,36** includes a tube **36** within the post **12** having an upper end in the region of the lower end of the slot **24** in the post, the cassette being seated upon the upper end of the tube (Figure 4).

As to claim 6, Oster discloses a device wherein no tape-holding cassette occupies the upper end of post **12** (Figure 4).

As to claim 7, Oster discloses a method of assembling a pedestrian traffic control device, the device including a hollow post **12** having an open upper end and a slot **12** between and spaced from the post ends, both the upper and lower edges of the slot being spaced from the upper end of the post at least several inches (inherently; based on scale of Figures 1 and 4), and a cassette **30,18** incorporating spool **30** on which a tape **18** is completely wound, the free end the tape being exposed, the method including the steps of:

inserting the cassette into the open end of the post,

maneuvering the cassette along the length of the post until the free end of the tape is accessible through the slot in the post,

pulling the free end of the tape through the slot, and

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thereafter attaching a finger pull **20** to the free end of the tape exposed outside the post, the pull being sized large enough so that the free end of the tape, with pull attached cannot be retracted into the post through the slot (Figures 1 and 4).

As to claim 8, Oster discloses a method wherein the tape-carrying spool **30** is spring biased in a direction tending to wind the tape **18** on the spool, so that pulling the free end the tape through the post slot adds tension to the spring (Figure 4).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oster.

As to claim 3, Oster fails to disclose a device wherein the cassette is held within the post at a position such that the lower edge of the tape, when extended, is less than twenty-seven inches above the floor supporting the post.

The applicant is reminded that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a device as disclosed by Oster wherein the cassette is held within the post at a position such that the lower edge of the tape, when extended, is less than twenty-seven inches above the floor supporting the post as such practice is a design consideration within the skill of the art.

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Response to Arguments

8. Applicant's arguments, filed February 18, 2005, with respect to the rejection(s) of claim(s) 1-8 under Tensator Limited (GB 2 247 095) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Payne (US 4,119,301) and Oster (US 4,844,420).

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patent shows the state of the art with respect to pedestrian traffic control devices:

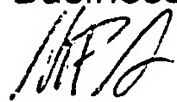
Kane (US 5,029,819) is cited for pertaining to devices comprising a hollow post having a slot and a cassette.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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06/21/05



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